

PUBLIC COMMENT SOUGHT
MT FWP and FWP Commission
September 2014

Montana Fish, Wildlife & Parks and FWP Commissioners are seeking public comment on a settlement agreement between FWP and Wankens.

A detailed summary of the settlement agreement between the Wankens and FWP is provided in this public information packet. If you have questions, need further information or clarification on any of the points below feel free to contact FWP at the address, email or phone number below.

The Marias River WMA is located nine miles southwest of Shelby along the Marias River in Toole and Pondera counties. The Marias River runs the entire 14-mile length of the property with wide riparian habitats and associated river breaks, all composed primarily of native habitat. Existing public access points on the north side of the WMA only reach the WMA boundary and do not provide vehicle access to the river bottom. Pending a settlement or court's determination, no access—either public or administrative—is currently possible to the east side, where the WMA headquarters is located.

The current lawsuit between Wanken Farms, and Troy Wanken ("Wankens") and FWP is centered on the question of whether historic use created an implied easement for access to the Marias River WMA on the east side via the Lincoln Road. In April 2013, a court-ordered mediation resulted in a negotiated settlement agreement between the parties, subject to the approval of the Commission and the Board of Land Commissioners. The Commission voted to deny the proposed settlement, citing concerns about the limited nature of the access that was negotiated. FWP and the Wankens negotiated an alternative settlement, with Commissioners Stuker and Tourtlotte participating in the settlement negotiations. Changes from the previously proposed settlement include:

1. FWP will transfer approximately 483 acres to Wanken Farms, shown on the attached map. Though this is an increase in acreage compared to the previous settlement, FWP will retain the right of public access and recreational use on the 483 acres of property in perpetuity. The previous settlement did not include any recreational public access on the property to be deeded to Wankens.
2. FWP grants the Wankens the opportunity to match the high bid for any grazing lease on the WMA if FWP determines grazing on the WMA will enhance wildlife habitat.
3. Wanken Farms and Troy Wanken grant an easement for public recreational use access on the Lincoln Road from April 1 to January 15 of each year as described in #4 below. The WMA is closed to all public uses from January 16 through March 31. The previously negotiated settlement limited access solely for hunting and only from the beginning of archery season to the end of big game season (approximately first part of September to

last few days of November). Access under the previous and denied agreement was very limited to three day use parking spots and three over night spots and did not allow access for any purpose other than hunting.

4. Access on the Lincoln Road will be administered by FWP through a reservation only system. The number of reservations per day varies seasonally from 5 reservations per day (April 1 – June 1); 7 reservations per day (June 2 – September 1); 15 reservations per day (September 2 – December 1); 7 reservations per day (December 2 – January 15) (each reservation represents one vehicle). Individual reservations are per day but a person can make multiple reservations for consecutive days subject to FWP WMA rules. The previously proposed settlement limited access to three day use and three overnight parking spots.
5. FWP would have unrestricted administrative access rights to the Marias River WMA on the east side via the Lincoln Road and all 2 track ranch and farm roads needed to manage the Marias River WMA.

E-mail Comments by 5:00 pm October 3, 2014 to:

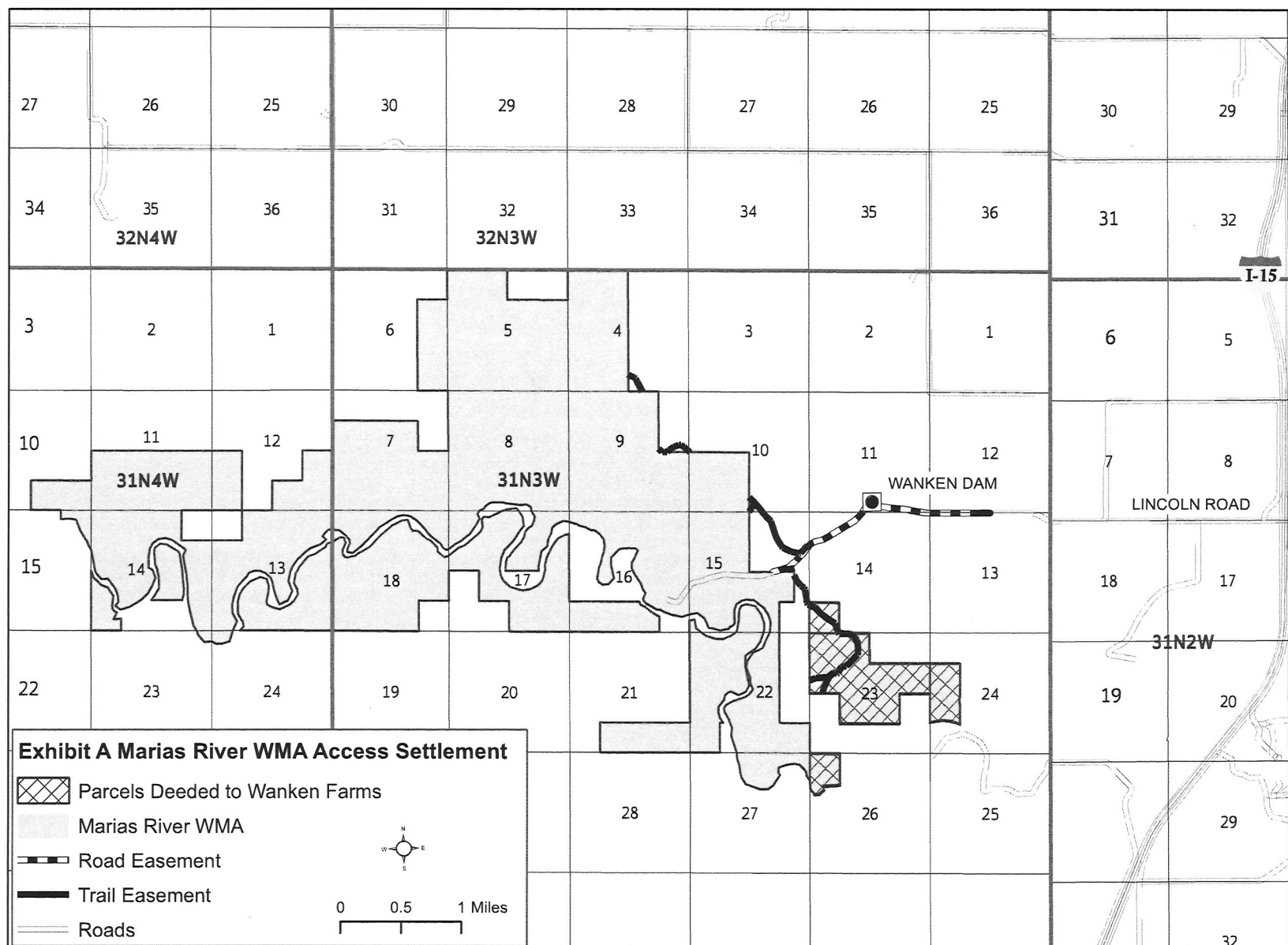
Gary Bertellotti
Subject: FWP - Wanken agreement
gbertellotti@mt.gov

Or send via U.S. Postal Service:

Gary Bertellotti
4600 Giant Springs Road
FWP Regional Supervisor
Great Falls, MT 59405

Or phone:

FWP Great Falls Office
1-406-454-5840
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Legal

SETTLEMENT AGREEMENT

This agreement is made and entered into this 21st day of August, 2014, by and between

State of Montana, Department of Fish, Wildlife & Parks (FWP/Plaintiff) and Wanken Farms and

Troy Wanken (Defendants).

The parties agree as follows:

I. Wanken Farms and Troy Wanken grant FWP an easement for administrative access through the Wanken properties on the Lincoln road and the bench or two track roads that traverse the Wanken properties. Similarly, FWP grants Wanken Farms and Troy Wanken an easement to FWP's property over existing bench or two track roads that traverse the FWP property for either's farm and ranch operations.

2. Wanken Farms and Troy Wanken grant an easement for public access on the Lincoln Road to FWP from April 1 to January 15 each year, as limited by the terms outlined in paragraph 4 below.

3. The parties agree to equally share the expenses of maintenance of the Lincoln road where it crosses the Wanken Farms property. Either party may request such maintenance. In either event, such maintenance shall be performed by or at the direction of Wanken Farms. Wanken Farms will provide in writing to the FWP Region 4 Supervisor a description of and the estimated cost of such maintenance work. Upon approval by the Region 4 Supervisor, Wanken Farms shall promptly perform or arrange for performance of said maintenance work. Upon completion of the work, Wanken Farms shall submit to the Region 4 Supervisor an invoice for FWP's one-half share of the cost of the work, which invoice shall thereupon be paid by FWP. FWP shall indemnify and hold Wanken Farms harmless from and against any claim for injury or

damage claimed to have been caused, wholly or in part by the condition of the road or the maintenance undertaken by Wanken Farms pursuant to this paragraph. The parties shall keep the roadway in substantially the same condition as it is at the time of this agreement, as a gravel road customary in the area, with a functional cattle guard at the point where the roadway crosses onto Wanken Farms Property.

4. The parties agree that access on the Lincoln Road will be limited by a reservation only system administered by FWP. The parties agree that the number of reservations per day shall be as follows:

(a) from April 1 to June 1, 5 reservations per day;

(b) from June 1 to September 1, 7 reservations per day;

(c) from September 1 through December 1, 15 reservations per day; and

(d) from December 1 through January 15, 7 reservations per day.

Each reservation represents one vehicle that may access the WMA for the day(s) the reservation is made.

5. FWP grants approximately 483 acres to Wanken Farms, as depicted on the attached map and designated by the red boundary line (Exhibit A), retaining the right of public access and recreational use on that property. Access on the Lincoln Road is subject to the road easement established in paragraph 2, as limited by paragraph 4.

6. FWP will post signs at mutually agreed upon locations along the Lincoln Road clarifying that public use of the Lincoln Road to access the Marias River WMA is limited to those with a reservation, and that those without a reservation are subject to charges of criminal trespass. FWP shall also post speed limits at such locations as agreed upon by the parties hereto and shall likewise post signs that use of the Lincoln Road across the property of Wanken Farm is subject to the right of way of vehicles and implements used for agricultural purposes. FWP will

install a sign-in box at a mutually agreed upon location, where those with reservations will be required to stop and sign in. Any gate on the Lincoln Road used to access the WMA will remain unlocked unless the WMA is closed to public access by FWP.

7. If FWP determines that grazing is consistent with wildlife habitat objectives for the WMA, FWP grants to Wanken Farms and/or Troy Wanken the right of first refusal to match the high bid for any grazing lease developed for the WMA. If FWP develops such a lease, it will use its best efforts to establish a minimum lease term of six (6) years for any such lease.

8. This Agreement is subject to and conditioned upon approval by the FWP Commission and the Montana Board of Land Commissioners.

9. Upon execution of the easement for administrative and public access, the recreational easement, and the grant deed transferring land, all as described herein, the parties agree to

stipulate to the dismissal of the Complaint and Counter Claims with prejudice so as to terminate the litigation now pending between them.

DATED the day and year first written above.

MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS

By *M. Jeff Hagener*

WANKEN FARMS

By *Francis E. Wanken Pres.*

TROY WANKEN

Troy Wanken

CI Legal Unit